IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 831 OF 2004

Jayendragiri Anandgiri Goswami
alias Mukesh Patel ... Applicant

versus

Narcotics Control Bureau & anr. ... Respondents

...

Mr. Ayaz Khan, for the Applicant.

Mr. V.C. Gupte for Respondent No. 1.

Mr. K.V. Saste, A.P.P., for the State.

...

CORAM : A.M.KHANWILKAR,J.

29th September 2004

P.C.:

. Heard Counsel for the parties. The only point pressed before this Court is that there has been infraction of Article 22(2) of the Constitution of India, inasmuch as the Applicant was arrested on 13th December 2000, but was produced for the first time before the Court only on 20th December 2000. The grievance made before this Court is that although this legal question

was raised before the Court below, the Court below has rejected the application by order dated 17th January 2004 on the reasoning that such contention was raised at the instance of the Applicant on earlier occasion before the High Court in Criminal Application No. 1857 of 2002 decided on June 27, 2002 and has been rejected. It is on that basis the Court went on to observe that it is not open for the Applicant to raise the same contention afresh before the trial Court. Counsel for the Applicant has drawn my attention to para 7 of the order passed by this Court dated 27th June 2002 in Criminal Application No. 1857 of 2002. The contention recorded in the said order is in the context of non-compliance of section 57 of the Act and not the one which is raised in the present application. This position is fairly accepted by the learned P.P. The learned P.P. on instructions states that this Court had no occasion to deal with the ground as is pressed into service on behalf of the Applicant regarding infraction of Article 22(2) of the Constitution of India. If it is so, the appropriate course is to set aside the impugned order and relegate the parties before the Special Judge, N.D.P.S. Act,

to decide only the said question of infraction of Article 22(2) raised in Bail Application No. 132 of 2002 on its own merits in accordance with law. All questions in the context of the infraction of Article 22(2) are left open. The application be decided as expeditiously as possible by the trial Court preferably within one month from the date of receipt of writ of this Court.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)